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Federal Communications Commission
Office of the Secretary

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WT Docket No. 03-128: Nationwide Programmatic Agreement

The finalization of a Nationwide Programmatic Agreement (NPA) promises to be an important accomplishment and milestone that will assure that the FCC fully fulfills its obligations under the National Historic Preservation Act.

- Crown Castle believes there are a handful of pivotal and unresolved issues that could seriously undermine the ability of an NPA to achieve its stated purpose, including.
 - Exclusion No. 1 (in Section III A) could unravel (perhaps unintentionally) the logical and statutory construct of the NPA by expanding the range of actions that are considered to be Undertakings
 - Exclusion No. 1 states: *"Modification of a tower and any associated excavation that does not involve a collocation and does not substantially increase the size of the existing tower, as defined in the Collocation Agreement."*
 - The actions detailed in "Exclusion No. 1" are not Undertakings for the purposes of the NHPA or the ACHP regulations. These actions:
 - Are not funded in whole or in part with Federal funds, and
 - Do not require or involve the issuance of a Federal permit, license, or approval
 - Exclusion No. 1 could yield unintended consequences
 - The notion of what "is" and "is not" an Undertaking will be blurred. As a result, the overall scope of the FCC's Section 106 and other environmental obligations may expand as other types of "modifications" (which may or not be associated with regular maintenance or servicing) that are not related directly to the issuance of an FCC license are considered to be Undertakings that are subject to direct FCC authority

Examples of activities that could be considered to Undertakings:

- Construction of a new fence at an existing tower site.

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- Extension of an access road to an existing tower site
- Planting scrubs or other making other landscaping improvements at an existing tower site.
- Installing a new air conditioning or back-up power generator at a tower site
- Routine and environmentally innocuous actions that do not pose any potential to adversely affect historic resources (see above) could become subject to exhaustive tribal consultation. This would present especially serious logistical and operational challenges if FCC were to incorporate the Navajo Nation proposal (in section III B of the Draft NPA) into the final NPA
 - In practical terms, under such a scenario, an action that involves a collocation that doesn't increase the size of a tower, would not be subject to tribal review by virtue of the 2001 Collocation Programmatic Agreement while a similar action that does not involve a collocation would be subject to tribal review? Such a result would be absurd and illogical.
 - This result would also create troublesome enforcement implications because conceivably any one of many routine actions at a tower site could be considered a modification. This is especially true given the expansive definition of tower in the Draft NPA to include fencing, power sources, switches, shelters, and cabinets.
- Exclusion No. 1 should be removed and language should be added to Section I.B. stating that modifications that do not increase the size of the tower are not Undertakings.
- The tribal consultation procedures in "Alternative A" satisfy all requirements of the NHPA and the ACHP regulations and should be adopted in the final NPA. In contrast, consultation "Alternative B" would distort the respective responsibilities of the FCC and other consulting parties in the Section 106 review process.
 - Alternative B would impose unnecessary and extraneous administrative requirements (such as having to secure "letters of certification") on applicants and the FCC.
 - Alternative B would accord tribes with the authority to issue regulatory "approvals" and "denials" for FCC Undertakings. This is a concept not contemplated in either the NHPA or in the ACHP regulations.

Contact: Sheldon Moss (724) 416-2349